IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

Bail Appl..No. 6823 of 2007()

CRIME NO.878/07 OF KALADY POLICE STATION

PETITIONER/ACCUSED NO.4

KUNJUMON, AGED 48 YEARS,
S/O.KUTTAPPAN, ANAPARAPARAMBIL HOUSE,
NEELESWARAM, KALADY VILLAGE.

BY ADV. SRI.K.SUNILKUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. No. 6823 OF 2007

Dated this the 12th day of November, 2007

ORDER

Application for anticipatory bail. The petitioner is the 4th accused. Altogether, there are 4 accused persons. They face allegations for offences punishable, inter alia, under Sec.379 of the IPC. 1.5 Kgs. of aluminium cable belonging to the K.S.E.B. was allegedly stolen. The theft allegedly took place on 26/10/07. Accused 1 and 2 were arrested on 29/10/07. Interrogation of the arrested accused revealed the complicity of the petitioner and the 3rd accused. The 3rd accused has not been arrested yet. He is absconding. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He has strain in his relationship with accused 1 and 2. On account of such

animosity, accused 1 and 2 are falsely implicating the petitioner now. The petitioner may be saved of the trauma of undeserved arrest and detention.

3. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that, at the moment and with the available inputs, there is absolutely nothing to assume or apprehend that accused 1 and 2, because of prior animosity, are attempting to falsely implicate the petitioner herein. The entire booty has not been recovered and the interrogation of the petitioner is necessary to locate the balance of the stolen article. The petitioner may not be permitted to arm himself with an order of anticipatory bail. He may be directed to surrender before the Investigating Officer or the learned Magistrate and then seek regular bail in the ordinary course. The fanciful theory about animosity of the 1st accused towards the petitioner and the consequent attempt by the co-accused to falsely implicate the petitioner may not be readily swallowed at this stage, submits the learned Public Prosecutor.

4. Having considered all the relevant inputs, I find merit in the opposition by the learned Public Prosecutor. At the moment and with the available inputs, I am not persuaded to agree that there are any features in this case which would justify

or warrant the invocation of the extraordinary equitable discretion under Ser.438 of the Cr.P.C. This, I am satisfied, is a fit case where the petitioner must co-operate with the Investigator and surrender before the Investigating Officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. In the result, this bail application is dismissed; but with the observation that if the petitioner surrenders before the Investigating Officer or the learned Magistrate and seeks bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge